

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:13-cr-0233-SEB-TAB
)	
MICHAEL MCCAULEY,)	- 01
)	
Defendant.)	

REPORT AND RECOMMENDATION

On January 17, and 24, 2020, the Court held hearings on the Petition for Warrant or Summons for Offender Under Supervision filed on October 8, 2019. [Dkt. 71.] Defendant McCauley appeared in person with his appointed counsel Dominic Martin. The government appeared by MaryAnn Mindrum, Assistant United States Attorney. U. S. Parole and Probation appeared by Officers Michael Burress and Mark McCleese.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant McCauley of his rights and ensured he had a copy of the Petition. Defendant McCauley orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant McCauley admitted violation numbers 1, 2, and 3 as set forth in the Petition. [Docket No. 71.]

3. The allegations to which Defendant admitted, as fully set forth in the Petition, are:

**Violation
Number**

Nature of Noncompliance

- 1 **“The defendant shall refrain from any unlawful use of a controlled substance.”**

On September 24, 2019, Mr. McCauley admitted consuming Spice, and the urinalysis tested positive for amphetamine. Subsequently, Alere confirmed the urinalysis for amphetamine and methamphetamine, as well as a synthetic cannabinoid. Additionally, the offender tested positive for amphetamine on February 7, 2019, January 15, 2019 and December 27, 2018.

- 2 **“The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.”**

Mr. McCauley was instructed to report to the probation office on October 7, 2019, and he failed to report as instructed. Previously, he failed to report to the probation office on February 4, 2019; May 6, 2019; September 20 and 30, 2019.

- 3 **“The defendant shall participate in a substance abuse treatment program at the direction of the probation officer, which may include no more than eight drug tests per month. The defendant shall abstain from the use of all intoxicants, including alcohol, while participating in a substance abuse treatment program. The defendant is responsible for paying a portion of the fees of substance abuse testing and/or treatment in accordance with his ability to pay.”**

Mr. McCauley did not attend substance abuse treatment scheduled on March 18, 2019; April 29, [2019]; and August 30, 2019. He has not participated in treatment since July 30, 2019.

4. The Court finds that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant’s criminal history category is V.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 18 to 24 months’ imprisonment.

5. The government argued for a sentence of fifteen (15) months with no supervised release to follow. Defendant argued for a sentence to be served at the Volunteers of America with substance abuse treatment.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions set forth in the Petition, and recommends that Defendant's supervised release be revoked, and that Defendant be sentenced to the custody of the Attorney General or his designee for a period of six (6) months with eighteen (18) months of supervised release to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

1. You shall report to the probation office in the district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. Justification: This condition is an administrative requirement of supervision.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer. Justification: This condition is an administrative requirement of supervision.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer. Justification: This condition is an administrative requirement of supervision.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege. Justification: This condition is an administrative requirement of supervision.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact. Justification: This condition is aimed at reducing the risk of recidivism and providing for public safety.

7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer. Justification: This condition is an administrative requirement of supervision.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment. Justification: This condition will ensure the defendant maintains gainful employment and reduce the risk of recidivism.
11. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement. Justification: This condition is aimed at reducing the risk of recidivism and providing for public safety.
12. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision. Justification: This condition is aimed at reducing the risk of recidivism and providing for public safety.
13. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer, and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will help ensure the defendant's mental health needs are identified and addressed.
14. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage. Justification: This condition will address the defendant's history of substance abuse.

15. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods. Justification: This condition will help ensure compliance with a drug-free lifestyle.
16. You shall provide the probation officer access to any requested financial information and shall authorize the release of that information to the U.S. Attorney's Office for use in connection with the collection of any outstanding fines and/or restitution. Justification: This condition will help ensure legitimacy of employment earnings.
17. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.


In addition to the above noted conditions, the Court ordered the following condition which was read to Defendant on the record:

18. You shall reside at a Residential Reentry Center for a period of up to 180 days at the direction of the probation officer.

The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties have fourteen days after being served a copy of this Report and Recommendation to serve and file written objections with the District Judge.

Dated: 3 FEB 2020



Mark J. Dinsmore
United States Magistrate Judge
Southern District of Indiana

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